

## Ratification of Notary Deed for Persons with Physical Disabilities



Ezra Mahesti Anggraeni Putri Kioek<sup>1\*</sup>, Ahmad Syaufi<sup>2</sup>, Suprpto<sup>3</sup>

<sup>1</sup>Master of Notary, University of Lambung Mangkurat

<sup>2,3</sup>Faculty of Law, University of Lambung Mangkurat

**ABSTRACT:** Signature is a formal aspect that must be fulfilled in making a deed. However, problems are often encountered in the field when the person signing is a person with a disability. So that the purpose of this research is to analyze the ratification of notarial deeds for persons with disabilities and how the urgency and legal implications of applying the fingerprints of the presence on the minutes of the notary deed. The method used in this research is a normative research method. The results of this analysis show that first, preventive legal protection for persons with physical disabilities in making deed before a notary is contained in Notary Law which is stated in article 44 paragraph (1) Notary Law. Second, attaching the fingerprints of the appearer to the minute of the deed is considered important to prove the appearer/appearers/the parties to the minute of the notary deed against denial of the signature in the event of a dispute in the future, as well as giving more legal force to the notarial deed.

**KEYWORDS:** Legal Protection, Notary Deed, Physical Disabilities

### 1. INTRODUCTION

The Constitution of the Republic of Indonesia of 1945 in Article 1 paragraph (3) states that Indonesia is a state of law. The principle of the rule of law itself is to provide certainty, order, and legal protection to the entire society. All Indonesian citizens have the right to certainty, order, and legal protection, including in carrying out legal actions. One example is entering into a contract or agreement. A contract or agreement according to Article 1313 of the Civil Code is a legal act by which one or more parties bind themselves to one or more persons. Contract is a class of legal acts, the legal act in question is an act that produces legal consequences due to the intention of the actions of one or more people.<sup>1</sup>

As part of Indonesian citizens, it is appropriate for persons with disabilities to receive special treatment to protect themselves from vulnerability to various forms of discrimination, and especially to protect themselves from various human rights violations. To guarantee and protect the rights of persons with disabilities, the government is increasingly aggressively intervening in the problems of persons with disabilities. This is also supported by the ratification of the Convention on the Rights of Persons with Disabilities which is specifically mentioned in Law on Persons with Disabilities Number 4 of 1997, then amended by Law Number 12 of 2011, and finally amended again by law. 8 Year 2016 on Persons with Disabilities, which specifically provides a strong legal basis for the fight for equal rights for persons with disabilities.<sup>2</sup>

Based on Article 1 number (7) Notary Law that:

*"A notarial deed is an authentic deed made by or before a Notary Public according to the forms and procedures stipulated in this Law."*

Signature is a formal aspect that must be fulfilled in making a deed minuta. In Law 30 of 2004 concerning Notary as amended by Law Number 2 of 2014 concerning Notary Positions Article 1 point (8) it is determined that the minuta deed is the original deed that includes the signatures of the facers, witnesses, and Notaries, which are kept as part of the Notary protocol. Based on this understanding, in the minuta there must be signatures of the facers, signatures of witnesses and signatures of Notaries, as a form of approval of the obligations contained in the deed.

<sup>1</sup> Ridwan Khairandy, *Hukum Kontrak Indonesia Dalam Perspektif Perbandingan (Bagian Pertama)*, Cetakan Kedua (Yogyakarta: FHUII Press, 2014).

<sup>2</sup> Nur Paikah, "Implementasi Undang-Undang Nomor 8 Tahun 2016 Tentang Penyandang Disabilitas Dalam Perlindungan Dan Pemenuhan Hak Penyandang Disabilitas Di Kabupaten Bone," *Ekspose: Jurnal Penelitian Hukum Dan Pendidikan* 16, no. 1 (April 13, 2019): 335-48, <https://doi.org/10.30863/ekspose.v16i1.91>.

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When making a notarial deed, the parties appear before the notary and the notary reads the contents of the deed. Based on the provisions of Article 44 of the Notary Law as an implementation of the notary office regulations, it also regulates the signing provisions, which are as follows:

- (1) *As soon as the deed is read, it is signed by every confront, witness, and Notary, except when there is a complainant who cannot sign stating the reason.*
- (2) *The reasons referred to in paragraph (1) are expressly stated at the end of the deed.*

Article 44 paragraph (1) of Notary Law provides an obligation for the facing to sign the deed after it has been read by a Notary, with the exception that if there is a face who cannot put a signature, the face must state the reason which will later be expressly stated at the end of the deed. Furthermore, there is a new arrangement in the Notary Office Law, namely Article 16 paragraph (1) letter c Notary Law based on the provisions in the article there is an obligation "the notary must attach letters and documents and fingerprints of the face to the minuta deed." The problem that arose then was that there was a debate among notaries, namely the meaning of the word attach by affixing a debate then what if the face has physical disabilities such as not having fingers, blind or unable to read and write so that they cannot put their signature on the deed, whether the face is obliged to attach fingerprints to the minuta of the deed as a form of individualization of the deed his approval, the meaning of attaching meant by fingerprints here still occurs multi-interpretation.

The practice that occurred in society before the enactment of the Notary Law was that fingerprints were attached to the Minuta Deed only if the face was illiterate or disabled so could not sign the Minuta Deed. The fingerprint used by the Party who cannot sign the Minuta Deed in lieu of the facer's signature (*surrogate*) is the party left thumb. Regarding these latest developments, on the facts on the ground, many parties question the existence and use of fingerprints as one of the formal provisions. Many parties consider this provision to be multi-interpretation related to several things, including fingerprints used, procedures for attaching fingerprints, then related to Faces who cannot provide fingerprints (such as people with physical disabilities). This then raises many problems and interpretations for Notaries.<sup>3</sup> The lack of understanding about how to use Surrogate in the world of notarial in Indonesia raises concerns about how the legal position of the notarial deed in which it uses surrogate as a substitute for the signature on the notarial deed This is because the Notary Law does not explain the procedures for using surrogate and in the provisions "hindered to write" what kind of surrogate and how fingerprints can be used in the Notary Deed.

## 2. RESEARCH METHOD

The type of research used in legal writing is Normative or doctrinal legal research, This type of legal research is research on legal principles (dogmatic studies or doctrinal research).<sup>4</sup> As for doctrinal research is a prescriptive legal research, legal science studies the purpose of law, the values of justice, the validity of the rule of law, legal concepts, and legal norms.<sup>5</sup> This research is *prescriptive analytical* which aims to get suggestions which are then analyzed to solve the legal issues raised.<sup>6</sup> The approach used is the statue approach, case approach and conceptual approach.

## 3. RESULT AND DISCUSSION

### RATIFICATION OF NOTARIAL DEED FOR PERSONS WITH DISABILITIES

#### Legal Protection for Persons with Disabilities in Making Deeds before a Notary Public

Notaries as public officials who carry out the profession of providing legal services to the public, need to get protection and guarantees to achieve legal certainty. This is one of the philosophical foundational considerations regarding the existence of a notary. The philosophy of appointing notaries as general officials is to provide protection and guarantees for the achievement of legal certainty. Legal protection is an effort to provide a sense of security to notaries so that they can best exercise their authority, and the deeds they make can be used by the parties.

In Article 1 Paragraph (1) of Law Number 8 of 2016 concerning Persons with Disabilities, what is meant by Persons with Disabilities is any person who experiences physical, intellectual, mental, and/or sensory limitations for a long time who in interacting with the environment may experience obstacles and difficulties to participate fully and effectively with other citizens based on equal rights. However, not all people with disabilities are people who do not have reason, but people with disabilities have their own categories based on their types, namely Physical, Intellectual, Mental, and Sensory Disabilities. Based on this classification, it can be known whether the person with a disability is reasonable or not. But so far people who experience physical disabilities are not

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<sup>3</sup> Guritno Tri Kuncoro, Diana Tantri Cahyaningsih, and Anjar Sri Ciptorukmi Nugraheni, "Efektivitas Pasal 16 Ayat (1) Huruf C Undang-Undang Nomor 2 Tahun 2014 Tentang Perubahan Atas Undang-Undang Nomor 30 Tahun 2004 Tentang Jabatan Notaris Mengenai Kewajiban Pelekatan Sidik Jari Penghadap Pada Minuta Akta," *Jurnal Privat Law* 6, no. 1 (February 2, 2018): 113–22, <https://doi.org/10.20961/privat.v6i1.19244>.

<sup>4</sup> Rahmida Erliyani, *Metode Penelitian Dan Penulisan Hukum* (Yogyakarta: Magnum Pustaka Utama, 2018).

<sup>5</sup> Peter Mahmud Marzuki, *Penelitian Hukum* (Jakarta: Kencana, 2008).

<sup>6</sup> Soerjono Soekanto and Sri Mamudji, *Penelitian Hukum Normatif* (Jakarta: PT. Raja Grafindo Persada, 2004).

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included in the group of incompetents to do legal actions, because basically their minds remain healthy, and they can be responsible for the consequences of the legal actions they do.

Physical disability according to Law Number 8 of 2016 concerning Persons with Disabilities is one type of disability that experiences a decrease in mobility or endurance, which affects the muscular, respiratory, or nervous systems, as well as disturbances in activities. Persons with physical disabilities often experience barriers to interaction with the environment and difficulty in participating fully and effectively with other citizens based on equal rights. But with these limitations, people who experience physical limitations have the same rights as stipulated in the law, if given space or opportunity to develop their abilities that are within themselves.

Types of people with physical disabilities:

1. Amputation is someone who has severed part of the hand, and or foot. or born without complete limbs from birth;
2. Paralyzed or stiff is someone who experiences stiffness or stiffness of the physical organs of the hands and or feet;
3. *Paraplegy*, which is a decrease in motor or sensory function of body movements, is usually caused by spinal cord injury or congenital conditions that affect the nerve elements of the spinal canal;
4. *Cerebral Palsy* (CP) is a person who experiences non-progressive posture and movement control disorders, caused by damage or paralysis of the central nervous system;
5. As a result of stroke, namely someone who has impaired physical function due to stroke;
6. As a result of Leprosy, namely someone who experiences loss or damage to parts of physical organs due to leprosy; and
7. A Small Person is someone who has a small body size that is not like most other people.

Related to making a notarial deed by a person with a disability, that for a contract by law to be considered valid so as to bind both parties, the contract must meet certain conditions. So are contracts performed by persons with disabilities. The terms of validity of a contract can be classified under Article 1320 of the Civil Code, namely an agreement of will; authorization to make; certain matters; legal power. General legal requirements outside Articles 1338 and 1339 of the Civil Code, which consist of good faith requirements; according to custom; in accordance with propriety; in accordance with the public interest. For specific legal terms consisting of written terms for certain contracts; notarial deeds for certain contracts; deeds of certain officials (not notaries) for certain contracts; permission from the authorities.<sup>7</sup>

To the conditions prescribed by Article 1320, namely conformity of will, ability to do, a certain thing and a permissible power.<sup>8</sup> In accordance with our discussion that focuses on people with disabilities, whether people with disabilities can be said to be competent in making contracts. One of the conditions for the validity of a contract as referred to in Article 1320 of the Civil Code is that the parties to the contract concerned must be in a state of ability to act (*bevoegd*).<sup>9</sup> What is meant by people who are capable (competence) in making agreements according to the applicable information that all people are capable (authorized) to make contracts, except those who are classified as minors; who are placed under custody; married woman; and persons prohibited by law from committing certain acts, this is regulated in Article 1330 of the Civil Code.

The four points above do not mention that people with disabilities are classified as people who cannot enter into agreements or contracts. However, it is explained that one of the classes of people who are considered incompetent to make a contract is if the person is placed under custody (*curatele*), *vide* Article 1330 number 2 of the Civil Code. Thus, what is meant by a person who is under custody so that he is considered incompetent to perform a contract according to Article 433 of the Civil Code is a person who is ignorant (*onnozelheid*); a madman (not of mind of mind); an amok person (*razernij*) and an extravagant person.

Efforts to provide legal protection for persons with disabilities in making deeds before notaries provided by the government indirectly in the form of custody. This is since in addition to disturbed mental health, the judge also argues that people who experience certain physical disabilities can be categorized as incompetent to perform legal actions, for example people who have a stroke and experience partial or total paralysis until they cannot carry out activities to meet their own interests.

In addition, if the person facing is a person with sensory disabilities, such as the blind and deaf, then in accordance with Article 43 paragraph (2) and paragraph (3) of the Notary Law which states that paragraph (2) in the event that the face does not understand the language used in the deed, the notary must translate or explain the contents of the deed in a language understood by the face. Subsection (3) if the parties wish, the deed may be made in a foreign language. Based on the article, the notary is obliged to translate into a language understood by the parties. In accordance with Article 44 paragraph (3) if the deed is translated into another language, it is signed by the face, notary, witness, and official translator. Then Article 44 paragraph (4) states that the reading, translation, or explanation, and signing as referred to in paragraph (1) and paragraph (3) and in Article 43 paragraph (3) are expressly stated at the end of the deed.

Faces who have certain physical disabilities, such as mute deafness, if not read by the face themselves, then the notary must read it and when it is being read must be accompanied to translate so that the face understands and at the end of the deed must be mentioned the name of the translator. Similarly, for blind people, if the person concerned asks for the deed to be translated into a

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<sup>7</sup> Munir Fuady, *Hukum Kontrak (Buku Kesatu)* (Bandung: PT. Citra Aditya Bakti, 2015).

<sup>8</sup> Munir Fuady, *Konsep Hukum Perdata* (Jakarta: PT. Raja Grafindo Persada, 2014).

<sup>9</sup> Fuady, *Hukum Kontrak (Buku Kesatu)*. *Loc.cit.*

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language understood by the face, namely braille, then the notary must translate it. At the end it must be mentioned at the request of the deed or one of the deeds is translated into braille.

Based on this, the government indirectly provides efforts to protect people with visual impairments, in this case to make a deed before a notary is by custody. Although the law does not state that people with visual impairments are included in care, to provide protection can be done by requesting assistance.

Legal protection is not only carried out both from notaries and the government. People with disabilities as their own faces also try to provide protection for themselves. The face, before carrying out legal actions, in this case makes a deed before a notary, first consults the notary, including explaining his condition who is a person with a disability. The person with the disability then follows what is advised by the notary. Where what is suggested by the notary is a form of protection both for the facer himself and the notary.

### Attestation of Notary Deed for Persons with Physical Disabilities

Before making an authentic deed before a notary, you must pay attention to Article 39 paragraph (1) of the Notary Law which states that the applicant must meet the requirements at least 18 (eighteen) years old or married; and capable of performing legal acts. Article 1320, that is, the attempt to have valid consent, needs to be fulfilled four conditions, namely their agreement which binds themselves; the ability to make an engagement; a particular subject matter; a cause that is not forbidden. Article 1329 of the Civil Code states that everyone is competent to make an agreement, unless according to law it is declared incompetent. Article 1330 of the Civil Code specifies incompetent persons, namely minors, those placed under guardianship, women who have married in matters prescribed by law, and in general all persons who by law are prohibited from making certain agreements.

The stages of making a notary deed, for *the first stage*, the Notary must first be able to assess the face/competent and authorized party and not including those prohibited by applicable law; Cakap means fulfilling Article 330 Civil Code; Authority means a person who faces making a deed for his own benefit, as a power of attorney from someone, and as a power of attorney in a position (director, chairman, guardian of parents) or position (guardian of superintendent, successor/substitution, curator). For *the second stage*, the interested parties express their intentions and objectives. *The third stage* is the content or material of the deed, the Notary must be responsible not only for the correction in the sense of obeying the will of the party who needs Notary services, but the Notary must use legal logic (fairness). *The fourth stage*, if the purpose and purpose of making the deed does not violate the law, ideology, customs, and culture, it will be followed up by asking for the completeness of data/documents both original and photocopy which must be completed by the face/party to be examined for correctness. Supporting data or documents in question include personal identity, civil status, license letters, ownership letters, and others that must be carefully examined for validity. The possible legal consequences must also be clearly and unequivocally explained. *The fifth stage*, After the party understands and understands the information from the Notary and the party agrees or agrees, then immediately the Notary prepares the minuta of the deed, it takes time depending on the situation and conditions can be a moment later, it can be several days.

Article 1868 of the Civil Code states that for a deed to have the power of authenticity, it must meet several conditions, namely made in the form prescribed by law, made by or before a public official. An authentic deed which in the making is affixed a signature at the end of the deed results in the deed becoming valid in the eyes of the law and can be used as perfect evidence, as long as in the process of making it has fulfilled the provisions of Article 1320 of the Civil Code as a condition for the validity of the agreement, Article 1868 of the Civil Code and Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning Notary juncto Law Number 30 of 2004 concerning Notary. The Notary Deed has perfect evidentiary power as evidence in the eyes of the law so that the judge no longer needs to test the authenticity of the deed if no other party disputes the contents of the deed. Similarly, a signature is affixed to an underhand deed.

The signing of the deed by the appellants is a condition that cannot be excluded. The granting of lawful consent is something that must be proven and can be seen to exist. Consent is often a signature; fingerprint stamp; and verbal consent.<sup>10</sup> The legal terms of the agreement as stipulated in Article 1320 of the Civil Code are closely related to the authenticity of the deed made by a notary based on the Notary Law. Article 44 of the Notary Law states that as soon as the Deed is read, it is signed by every confront, witness, and Notary, unless there is a contender who cannot sign by stating the reason. The reason is expressly stated at the end of the Deed. The deed is signed by the face, Notary, witness, and certified translator. The reading, translation or explanation and signing are expressly stated at the end of the Deed. Violation of the provisions results in a Deed only having the power of proof as a deed under hand and can be a reason for the party who suffers losses to claim reimbursement of costs, damages, and interest to the Notary.

Looking at the provisions stipulated in Article 44 of the Notary Law and its relation to the granting of valid legal approval to an agreement, in this case the affixing of legal approval by the face or witness is needed as one way also so that the notarial deed can be said to be authentic. The granting of legal approval as stipulated in the Notary Law can be in the form of signatures. People with disabilities with physical conditions who do not have fingers certainly cannot give their legal approval using signatures or

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<sup>10</sup> Savira Ramadhanty and Agus Budiarto, "Pemberian Persetujuan yang Sah Terhadap Akta Notaris yang Dibuat oleh Difabel Tanpa Sidik Jari," *Notary Journal* 3, no. 1 (April 30, 2023): 69–89, <https://doi.org/10.19166/nj.v3i1.6732>.

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fingerprints. Based on this, the notary can write a statement at the end of the deed regarding the reason for the non-signing in order to maintain the authenticity of the deed he made. The writing of this information needs to be studied further regarding the selection of grammar and the extent to which the notary is responsible for writing the information.

The existence of provisions regarding the permissibility of writing information at the end of the deed regarding the reason for not being able to put a signature on a deed is an act of providing accessibility for people with disabilities without fingerprints for legal service needs. The author means that indirectly Notary Law has also applied the principle of equality (as stipulated in the Law on Persons with Disabilities) in notarial practice.

A deed shall not lose its authenticity if the appellants do not affix their signatures, if the circumstances are described in the deed, so that if the claimant does not affix a thumbprint or thumb in lieu of a signature in making an authentic deed it will not bring legal consequences that cause the deed to lose its authenticity. The deed remains legally valid and still has value as an authentic deed even though it is not affixed with a thumbprint or fingerprint in lieu of signature because the statement of the applicant is used by the notary as the basis for attestation of the deed and the information is recognized as a substitute for signature (*surrogate signature*).

Basically, a deed will be valid in the eyes of the law and can be used as perfect evidence as long as the process of making it has fulfilled the requirements for the validity of the agreement Article 1320 of the Civil Code, namely the agreement of those who bind themselves, the ability to make an agreement, a certain thing, a lawful cause, then has fulfilled Article 1868 of the Civil Code and the provisions in the Notary Law.

According to G. H. S. Lumban Tobing, the things in which the signature can be replaced by "*surrogate*" according to law are in conditions of not being able to sign because they are not learned (illiterate); and is unable to sign, even if there is a study of writing, in which all things are included, where a person by any circumstance, whether permanent or temporary, cannot put his signature under the deed, even if he has the skill of writing. The explanation included at the end of the deed which can be called *surrogate* must also be strengthened by a doctor's certificate stating that indeed the person concerned cannot put his signature for certain medical reasons. The doctor's certificate will later be used as an attachment to the deed as the notary's file concerned, but it does not need to be written in detail at the end of the deed of existence of the doctor's certificate.

Regarding the doctor's certificate that will be used as one of the tools to apply the precautionary principle, it needs to be studied further regarding the ease of obtaining the doctor's certificate. A doctor's certificate can be issued if there is urgency, one of which is urgency for the purposes of legal action, including in making a deed. A doctor can issue a certificate that can support the party concerned in, among other things, taking legal action. The existence of a person with a disability without fingerprints who wants to make a deed before a notary can be supported by a doctor's certificate regarding the patient's condition. In accordance with the doctor's specialty, the diagnosis listed in the doctor's certificate is divided into clinical diagnosis and functional diagnosis.

Accessibility of people with disabilities without fingerprints for legal service needs needs to be supported by adequate infrastructure so that it can be applied fairly and equitably to all people with disabilities throughout Indonesia. The provision of information in lieu of signatures and thumbprints does not require a certain infrastructure to be carried out but is one of the steps and efforts towards implementing equitable accessibility of people with disabilities. This convenience can further raise new questions about if the disabled without fingerprints can still put their signature on the deed using other limbs. Symbols as simple as the cross 'X' can be said to be signatures so that if there are people with disabilities without fingerprints who have weak hand strength but can still give signatures, the notary still seeks to affix signatures to the deed. The author further argues that the granting of valid legal consent by persons with disabilities without fingerprints can be in the form of *signatures*, if not completely the fingerprints do not exist or all fingerprints do not exist but can still be attempted to affix signatures, then a simple signature must be affixed to the deed by the disabled person without fingerprints; or a *description at the end of the deed*, if the person with a disability is not at all possible to put his signature or fingerprint stamp on the deed, then the information at the end of the deed must be written by a notary clearly and unequivocally. The information contains the reason why the signature or fingerprint stamp cannot be affixed to a deed.

In practice, some notaries or Land Deed Making Officials "allow" fingerprints or more often called thumbprints, to be used instead of the signature of a person who cannot put his signature either because he cannot write (illiterate) or because his hands are disabled or paralyzed, things that often happen in Indonesia. In the field of civil law, thumbprints are usually taken so that it is better known as a thumbprint, either the thumb of the left hand or the right hand, which must be clearly stated which thumb is used.

Article 16 paragraph (1) letter c jo Article 44 of the Notary Law is the rationale and reference as to what responsibilities need to be applied by a notary in applying the use of surrogacy/surrogate. The responsibility that needs to be applied by this notary will also prevent the notary concerned from allegations of mispractice or the possibility of decreasing the evidentiary power of a deed. Notaries need to apply the precautionary principle in applying the use of surrogacy/surrogate needed when a disabled person without fingerprints cannot affix his signature and fingerprint stamp to a deed. The precautionary principles that need to be applied by notaries in the use of surrogacy/surrogate in deeds are as follows:

1. The use of sentence formulations at the end of the deed that are clear, firm, and precise to show the fact that people with disabilities without fingerprints really cannot sign and put fingerprints on the deed in which he is a face; and

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2. The accuracy and thoroughness of the notary that requires a doctor's certificate, both the diagnosis is carried out clinically and functionally, which explains the inability of the face to sign and put a fingerprint stamp on the deed in which he is a party.

### THE URGENCY AND LEGAL IMPLICATIONS OF APPLYING FINGERPRINTS TO NOTARIAL DEED MINUTA

#### The Urgency of Applying Fingerprints to Notary Deed Minuta

A deed is a "letter of proof containing an official statement (statement, confession, decision, etc.) made according to applicable regulations, witnessed and certified by a notary or authorized government official."<sup>11</sup> Dari pengertian akta tersebut di atas, dapat kita tarik tiga unsur, yaitu adanya surat tanda bukti; isinya pernyataan resmi; dibuat menurut peraturan yang berlaku; dan disaksikan dan disahkan oleh notaris atau pejabat pemerintah yang berwenang.

It is clear here that a proof letter is a writing that states the truth of an event or legal act. And the content of the deed in the form of an official statement means that what is written in the deed, is a valid statement of the officer or the parties. Made according to applicable regulations means that the deed is made in the presence of an official or made by the parties. Based on the provisions that have been determined by the authorized institution for it. While authentic<sup>12</sup> can be interpreted by:

"It is general, it is incumbent, it gives perfect proof (from letters); especially in the word "*authentieke akte*". Privileged Notaries are appointed to make authentic deeds either upon request or by order; But also, some state officials who have the right to make it on matters related to their job duties."

One more condition that must be added is that the authentic deed has perfect evidentiary power, because in the authentic deed it includes all elements of written evidence; witnesses; allegations; confessions; oaths. It is clear, then, here that an authentic deed has perfect evidentiary power, which can also be determined that whoever is bound by the deed, insofar as no evidence can be proved otherwise based on a court decision having permanent legal force.

Article 15 paragraph (1) of the Notary Law confirms that one of the Notary's powers is to make deeds in general, with limitations as long as they are not excluded to other officials stipulated by law; regarding deeds that must be made or authorized to make authentic deeds regarding all deeds, agreements, and provisions required by the rule of law or desired by the person concerned; regarding the legal subject (person or legal entity) for whose benefit the deed is made or desired by the interested person; authority regarding the place where the deed was made, this is in accordance with the place of residence and territory of the Notary Public's office; regarding the time of making the deed, in this case the Notary Public must guarantee the certainty of the time before the faces listed in the deed.<sup>13</sup>

Based on Notary Law, a deed minuta is the original deed made by or before a notary based on the law that includes the signatures of the parties, witnesses and notaries and attaches documents and fingerprints of the face. The above shows that the government, in this case, the framer of the law has the purpose and purpose of enacting the regulation. After the enactment of Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004, the provisions regulated therein have applied and are binding for Notaries. The amendment to the Notary Law has caused many kinds of interpretations, especially in Article 16 paragraph (1) point c that in carrying out their office Notaries are required to "attach letters and documents and fingerprints of the face to the minuta deed". Fingerprints in notarial deeds are basically nothing new in notary deeds. Fingerprints before the promulgation of this law are used as a substitute for signatures and/or paragraphs for parties (faces) in notary deeds if they cannot read/write, while after the enactment of the new law fingerprints are an obligation. In these provisions there are multiple interpretations, no settings (not specified).

Regarding which finger is used for the fingerprint. Although there is no setting, given guidelines regarding the finger used is to use the thumb of the hand, which as far as the author observes using the thumb of the right hand but it is not an absolute which means it is possible to use another finger. Fingerprints are the results of reproduction of fingerprints either deliberately taken, stamped with ink, or marks left on objects because they have been touched by the skin of the palms or feet. Palm skin is the skin on the palm starting from the base of the wrist to all fingertips, and the skin of the sole of the foot from the heel to the fingertips where in that area there are prominent fine lines that come out of each other separated by gaps or grooves that form a certain structure."

The regulation regarding the obligation to attach fingerprints to the minuta of this deed is considered very important, because if you only rely on someone's signature, the signature can change over time and age so that it is inconsistent, there is a possibility because someone has had a stroke which eventually results in the form of the signature is no longer the same. While fingerprints will not change at any time, unless there is a separate event that results in temporary or permanent disability resulting in damage or even loss of a person's limbs, especially on the hands and / or fingers. The function of fingerprint attachment in this case is also as a reinforcement of proof against the minuta of the deed itself. If it is only a signature, it can be denied or said to be false even though it is true that someone used to sign the deed, because there is no other evidence to state that the signature was done by him himself.

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<sup>11</sup> Departemen Pendidikan dan Kebudayaan, *Kamus Besar Bahasa Indonesia* (Jakarta: Balai Pustaka, 1994).

<sup>12</sup> N.E. Algra and H.R.W. Gokkal, *Kamus Istilah Hukum Fockema Andreae: Belanda - Indonesia*, trans. Saleh Adiwinata, A. Teloeke, and Boerhanoeddin St. Batoeah (Jakarta: Binacipta, 1983).

<sup>13</sup> J. Satrio, *Hukum Perikatan Yang Lahir Dari Perjanjian* (Bandung: PT. Citra Aditya Bakti, 1995).

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The General Officer of Land Deed Maker because it is considered very helpful, especially in the evidentiary process so that the parties concerned also get more legal certainty. There is a need for an implementing regulation regarding the regulation of the obligation to attach fingerprints because in the explanation of Article 16 paragraph (1) letter c of Notary Law it is only written "clear enough" so that there are no further specifications and cause multiple interpretations.

### Implications of the Application of Fingerprints in Minuta Notarial Deed

A deed made before or by a Notary Public has been determined in Article 38 of the Notary Law, which consists of that every notarial deed consists of the beginning of the deed or the head of the deed; the body of the deed; and the end or conclusion of the deed. For the beginning of the deed, it consists of the title of the deed; deed number; hour, day, date, month, and year; and the full name and place of residence of the notary. For the body of the deed, it contains the full name, place, and date of birth, nationality, occupation, position, position, residence of the complainants and/or the person they represent; a description of the position of acting against; the contents of the deed which is the will and will of the interested parties; and the full name, place of residence, and occupation, position, position, and residence of each identifying witness. The end and conclusion of the deed contains a description of the reading of the deed as referred to in Article 16 paragraph (1) letter l or Article 16 paragraph (7); a description of the signatory and the place of signing or translating the deed if any; full name, place of residence and date of birth, occupation, position, position, and residence of each deed witness; and a description of the absence of changes that occur in the making of the deed or a description of the existence of changes that can be in the form of addition, strikethrough, or replacement.

In the case of fingerprint taking, it is carried out when facing, especially for the face of the Deed of Relaa, while for the deed of partij, after it has been read, the contents of the deed are immediately taken fingerprints. The fingerprints referred to in Article 16 Paragraph (1) letter c of UUNJ literally the word fingerprint can be interpreted as all fingerprints on the fingers of the right and left hands as well as the right and left toes of the party, but the fingerprints are only taken fingerprints with the right thumb and left thumb fingerprints. Then the fingerprint is attached to the sheet "Left and Right Thumb Specifications" The sheet is made based on an agreement from the Indonesian Notary Association, consisting of the Identity of the Facer, Description of the Face in carrying out the agreement process, a table containing the name of the Face and a column of right thumb and column of left thumb. At the end it is written "thus this deed has been read and explained and then signed on the minuta of the deed and affixed with the thumbprints of the right hand and thumb of the left hand by the parties." Lembar tersebut kemudian dilekatkan pada Minuta Akta. Pelekatan Sidik Jari di Minuta diatur dalam Pasal 16 ayat (1) huruf c Notaris wajib melekatkan sidik jari para penghadap di minuta akta dengan alasan keamanan. Sidik jari yang diambil biasanya cukup menggunakan jempol kanan atau kiri.

According to Alwesius, there must be at least 4 (four) things that must be ensured related to the attachment of the fingerprint, namely the fingerprint is correctly based on the finger facing the person concerned; the fingerprint is sourced directly from the finger of the facing hand, in the sense that it is not through other media intermediaries; The fingerprint is taken in connection with the making of a certain deed (taken on each deed made in the form of a deed minuta), which is taken on a separate sheet containing a clear description of the title of the deed, the date of the deed, the deed number, the name of the face and if deemed necessary corroborated by the signature of the face; the fingerprints were taken on the day and the same date before a notary and witnesses during the deed making process and before the signing of the deed.

Some Notaries interpret article 16 paragraph (1) point c of the Notary Office Law differently. Among them there are those who relate to article 1874 of the Civil Code, that fingerprints are identical to thumbprints. Even though the thumbprint affix referred to in article 1874 of the Civil Code is intended for faces who cannot sign. Likewise, the provision of *Staatsblad* Number 276, that thumbprints be used in place of signatures.

Affixing the fingerprints of the face/facers/parties to the notarial deed minuta will provide more legal certainty because everyone has different fingerprints, so that if a dispute occurs in the future, the parties concerned cannot deny it. The existence of fingerprint affixing will also provide more legal force for Notary deed products, so that it will have an impact on more legal protection for the parties concerned, Notaries and third parties, and can maintain administrative order.

In Article 16 paragraph (1) point c of the Notary Law, it is explained that there is a Notary Duty, and those who violate the provisions as referred to in that article may be subject to sanctions in accordance with Article 16 paragraph (11) of the Notary Law, namely a written warning; temporary suspension; honorable dismissal; Dishonorable dismissal. The sanctions contained in Article 16 paragraph (11) of the Notary Office Law, for violations of Article 16 paragraph (1) point c can be categorized as administrative sanctions. This sanction is a sanction against a Notary relating to a deed made by a Notary. There are certain requirements or certain actions that are not carried out or not fulfilled by Notaries in carrying out their office duties in the form of obligations listed in the Notary Law.

Related to the application of signing the deed minuta and affixing the fingerprints of the parties in the notarial deed minuta can be categorized as follows:

1. The face who can sign must put his signature on a sheet of minuta paper;

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2. The face who cannot sign must affix his fingerprint on a separate sheet of paper which is then attached to the Minuta Deed in accordance with Article 16 number (1) letter c Notary Law, the sheet of paper is only for the face who cannot sign or only for the face to affix his fingerprint because he cannot sign.
3. The fingerprint to be used depends on the physical condition of the facing hand or fingerprint and at least one fingerprint. The fingerprints used must be written by a Notary on the sheet of paper.
4. Faces who cannot sign for some reason except cannot read or write then use Surrogate and mentioned at the end of the deed.

We can see that the sanction arrangement for notaries who do not attach the fingerprints of the face to the minuta of the deed has an exception if indeed the face is a physical disability without fingerprints who cannot put his signature and fingerprint stamp on the deed can be in the form of surrogacy/surrogate whose writing is in accordance with the provisions of Article 44 paragraph (2) of the Notary Law which is expressly, clearly, and written at the end of the deed after the sentence "after this deed is read by me, Notary to the face and witnesses,". Contains a sentence with an explanation of the circumstances why the face cannot put his signature and/or fingerprint stamp on the deed as a form of legal approval given by the disabled person.

The existence of this doctor's certificate can further strengthen whether indeed the diagnosis states that the face is unable to put his signature and fingerprint stamp or there are still other body parts that allow the face to put his signature and fingerprint stamp on the deed. The existence of the doctor's certificate is attached to the minuta deed as stipulated in Article 16 paragraph (1) letter c of Notary Law. The existence of a doctor's certificate does not need to be written at the end of the deed and is enough to attach it.

## 4. CONCLUSION

Preventive legal protection for persons with physical disabilities in making deeds before a notary is contained in the Notary Law listed in article 44 paragraph (1) of the Notary Law. Efforts to provide legal protection for persons with disabilities in making deeds before a notary are not only carried out by the notary itself as a form of preventive legal protection from the notary, but also carried out by the government. In general, the ratification of a notary deed for persons with physical disabilities, especially for persons with disabilities who do not have fingers or hands, just like other faces. The deed remains legally valid and still has value as an authentic deed even though it is not affixed with a thumbprint or fingerprint in lieu of a signature because the information of the face is used by the notary as the basis for attestation of the deed and the information is recognized in lieu of a signature (surrogate signature).

Attaching the fingerprints of the face to the minuta of the deed is considered important to prove the face/facers/parties to the minuta of the notarial deed against the denial of signatures in the event of a dispute in the future, also giving more legal force to the product of the notarial deed but does not affect the authenticity or validity of the minuta deed. Negative implications if the fingerprints of the facer/facers/parties are not affixed to the minuta of the deed in accordance with the Notary Office Law, it can be subject to tiered sanctions, namely written warning, temporary suspension, honorable dismissal, and dishonorable dismissal. The absence of fingerprint affixing will also not provide more legal force for Notary Deed products, thus impacting on the lack of legal protection to the parties concerned. While the positive implication if the fingerprints of the face / faces / parties to the notarial deed minuta is that it will provide more legal certainty because everyone has different fingerprints, so that if in the future a dispute occurs, the parties concerned cannot deny it.

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